

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

November 17, 2003

Agenda ID #2977  
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 98-01-014, et al.

This is the draft decision of Administrative Law Judge (ALJ) Angela K. Minkin. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:hl2

Attachment

Decision **DRAFT DECISION OF ALJ MINKIN** (Mailed 11/17/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (“SDG&E”) for Authority to Implement a Distribution Performance-Based Ratemaking Mechanism (U 904-M)

Application 98-01-014  
(Filed January 6, 1998)

In the Matter of the Application of Southern California Gas Company To Adopt Performance Based Regulation (“PBR”) for Base Rates to be Effective January 1, 1997 (U 902-M)

Application 95-06-002  
(Filed June 1, 1995)

Joint Application of Pacific Enterprises, Enova Corporation, Mineral Energy Company, B Mineral Energy Sub and G Mineral Energy Sub for Approval of a Plan of Merger of Pacific Enterprises and Enova Corporation with and into B Energy Sub (“Newco Pacific Sub”) and G Energy Sub (“Newco Enova Sub”), the Wholly-Owned Subsidiaries of a Newly Created Holding Company, Mineral Energy Company.

Application 96-10-038  
(Filed October 30, 1996)

Application of Southern California Gas Company for Authority to Update Its Gas Revenue Requirement and Base Rates. (U 904-G)

Application 02-12-027  
(Filed December 20, 2002)

Application of San Diego Gas & Electric Company for Authority to Update Its Gas and Electric Revenue Requirement and Base Rates. (U 902-M)

Application 02-12-028  
(Filed December 20, 2002)

**DECISION GRANTING WITH MODIFICATION THE PETITION OF SAN DIEGO GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA GAS COMPANY FOR MODIFICATION OF DECISION 01-10-030**

**Summary**

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) petitioned the California Public Utilities Commission (Commission) on August 26, 2003, for modification of Decision (D.) 01-10-030, adopted on October 10, 2001 in the above proceedings. In that decision, the Commission extended SDG&E's and SoCalGas' Performance Based Ratemaking (PBR) incentive mechanisms, including the performance indicators, for one year, through 2003, while changing at the same time the test year for their next cost of service applications from test year 2003 to test year 2004.

The Petition is granted with modification. In the consolidated applications (A.) filed on December 20, 2002, A.02-12-027 and 02-12-028, SoCalGas and SDG&E sought to adopt new incentive mechanisms for both companies applicable to a test year 2004. That proceeding was bifurcated by the Assigned Commissioner and Administrative Law Judge's (ALJ) ruling dated May 22, 2003 in response to SoCalGas and SDG&E when they filed a Motion for Reconsideration on April 19, 2003 of the Assigned Commissioner's April 2, 2003 Scoping Memo<sup>1</sup>. Extending the current PBR incentive mechanisms would prejudice the appropriate incentives, if any, that should be applicable to test year 2004. Extending the performance indicators is not the same as granting an incentive mechanism applicable to test year 2004 and is therefore permissible without prejudging the appropriateness, if any, of an incentive mechanism for 2004.

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<sup>1</sup> *Assigned Commissioner's Ruling Establishing Scope, Schedule and Procedures for Proceeding*, dated April 2, 2003 (Scoping Memo), and *Ruling Clarifying the Scoping Memo and Modifying the Schedule*, dated May 22, 2003.

**Notice, Service and Comment**

Notice of the Petition appeared in the Commission's Daily Calendar for September 5, 2003. SoCalGas and SDG&E served a copy of the petition on the service lists for A.98-01-014, 95-06-002 and the current consolidated Cost of Service Proceedings (COS) A.02-12-027 and 02-12-028. No party filed comments within the 30-days prescribed by Rule 47(f).<sup>2</sup>

**Background**

On June 1, 1995, SoCalGas filed A.95-06-002, for authorization to implement for the first time a base rate PBR program. On July 16, 1997, the Commission adopted D.97-07-054 (73 CPUC2d 469), and authorized a PBR mechanism for SoCalGas. The decision made the PBR mechanism effective on January 1, 1998<sup>3</sup> for 5 years, to end December 31, 2002<sup>4</sup>. The SoCalGas PBR decision adopted performance indicators related to SoCalGas' customer satisfaction, service quality, and employee safety, with associated financial incentives in the event the utility exceeded or failed to meet those standards.<sup>5</sup>

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<sup>2</sup> All references to Rules are to the Commission's Rules of Practice and Procedure found in Title 20 of the California Code of Regulations. All statutory references are to the Public Utilities Code unless otherwise indicated.

<sup>3</sup> Unless SoCalGas elected an effective date of January 1, 1997, which it did not.

<sup>4</sup> See 73 CPUC2d 469 at 507 and 510-511

<sup>5</sup> As described by the applicants in the Petition: "SoCalGas' customer satisfaction performance targets were established for: 1) customer satisfaction with the customer Service Representative, 2) customer satisfaction with the scheduling of the appointment of a field service call, 3) satisfaction with the field Appliance Service Representative, and 4) the percentage of on-time arrivals for the service call. The annual targets are based on average performance for 1994 through 1996 for each of these attributes. Performance results are gathered from responses to customer satisfaction telephone

*Footnote continued on next page*

On January 16, 1998 SDG&E filed A.98-01-014 seeking authority to implement a Distribution PBR mechanism. Several settlement agreements were filed with the Commission, the first of which set a 1999 cost-of-service based revenue requirement that would serve as the “starting point” for future PBR rate adjustments. A settlement agreement was adopted in D.98-12-038. While A.98-01-014 was litigated, there was considerable dispute among SDG&E and other parties concerning performance indicators. However, negotiations between those parties led to the filing of a PBR performance indicator Settlement Agreement in A.98-01-014. This second all-party settlement agreement resolved among the parties the “performance indicators” (measures of safety, reliability, customer satisfaction, and call center responsiveness) that would also be a part of the overall PBR mechanism.<sup>6</sup> On May 18, 1999, the Commission issued D.99-05-030, and approved the settlement agreement on performance indicators.<sup>7</sup>

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surveys. A deadband below the target is allowed, but if SoCalGas performance falls below the deadband, a penalty is assessed. No reward is provided for performance that exceeds the target. SoCalGas' telephone response time performance standard requires 80% of all telephone calls to be answered within 60 seconds for regular calls, and requires 90 per cent of all leak and emergency calls to be answered within twenty seconds. The employee safety performance component is based upon the frequency of certain injuries and illnesses reported to the Federal Occupational Safety and Health Administration (OSHA). The employee safety benchmark is set at a frequency of 9.3 incidents per 200,000 hours worked. Penalties will be paid by SoCalGas if its incident rate exceeds 10.3, and rewards will be paid if the rate falls below 8.3.” (emphasis added.)

<sup>6</sup> As described by the applicants in the Petition: “Employee safety is determined based on the Federal Occupational Safety and Health Administration (“OSHA”) frequency standard, measuring the regulated utility’s non-generation OSHA recordable lost-time and non-lost-time injuries and illnesses against total utility non-generation working hours. Customer satisfaction is determined based on the utility’s year-to-date performance as reported in the Customer Service Monitoring System (“CSMS”) Results.

*Footnote continued on next page*

**Discussion**

SoCalGas and SDG&E plead in the petition<sup>8</sup> that as a result of the delay in phase II in A.02-12-027 and A.12-020-028, if there is any incentive mechanism adopted for 2004 the companies would not know the expected customer service standards of performance for much of the year and consequently any retroactive application of standards developed in a phase II decision would not be reasonable.

The April 2, 2003 Assigned Commissioner's scoping memo at page 9, and the May 22, 2003 Ruling Clarifying the Scoping Memo at page 14, make clear that the question of the appropriateness of any incentive mechanism to be applicable

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CSMS is a telephone survey of SDG&E customers having recent contact with SDG&E personnel. Call center responsiveness is determined by a base level measure in which 80% of calls will be answered within 60 seconds on a 24-hour average annual basis. This includes both personal and electronic responses to inquiries, including Customer Service Representatives and Interactive Voice Responses. Rewards or penalties for electric system reliability are determined based on the utility's performance on three separate performance indicators. These indicators are: 1) the System Average Interruption Duration Index ("SAIDI"); 2) the System Average Interruption Frequency Index ("SAIFI"); and, 3) the Momentary Average Interruption Frequency Index ("MAIFI"). SAIDI measures the average duration of electric service forced and sustained interruptions experienced by customers on an annual basis. SAIFI and MAIFI both measure the average frequency of electric distribution forced outages on an annual basis. SAIFI measures sustained outages (5 minutes or greater), while MAIFI measures momentary outages (less than 5 minutes)." (Emphasis added.)

<sup>7</sup> As described by the applicants in the Petition: "The remaining disputed issues, which included the design of the PBR indexing, revenue sharing, monitoring, and evaluation, were set for hearings and litigated in late 1998. On June 17, 1999, UCAN and NRDC filed an Application for Rehearing of Decision 99-05-030, alleging that the Decision's adoption of a rate-indexing mechanism would injure SDG&E's customers. The Commission addressed this rehearing request in D.99-11-029."

<sup>8</sup> Petition, Page 1.

to test year 2004 is a contested issue and by no means is the Commission's authorization of any mechanism certain. Litigation in Phase II has not begun, apart from the applicants' service of direct testimony and supplemental direct testimony in response to the two scoping rulings. It is now chronologically impossible for the Commission to consider authorization of any incentive mechanism before the start of test year 2004. Extension of the existing performance indicators is one solution to setting objectives for SoCalGas and SDG&E management during 2004 to satisfy customer service needs. As previously adopted, utility conduct under the performance indicators could result in financial incentives, specifically rewards or penalties. It is not reasonable without a record to adopt any financial incentives for 2004 associated with the previous performance indicators at this time.

No party to the prior PBR proceedings or the current cost of service proceedings responded to this petition. The Commission has no certain knowledge of whether the current performance indicators are reasonable as a standard for rewarding shareholders for company performance under current conditions. Phase II could determine either that no financial incentive mechanism is currently warranted, or that the current performance indicators are inadequate or otherwise inappropriate for an incentive mechanism in 2004. Therefore any extension of the performance indicators must be seen as separate from a determination by the Commission that it will adopt any financial reward or penalty mechanism that will rely on them. It is with this condition, separating the performance indicator from any certainty of an incentive mechanism's financial reward or penalty in 2004, that the petition is granted.

SoCalGas and SDG&E proposed<sup>9</sup> the following underlined modifications to D.01-10-030:

**Finding of Fact 1:** A one year deferral of the SDG&E and SoCalGas COS/PBR applications is consistent with the Commission's priorities with respect to upcoming GRCs and related proceedings for all energy utilities. (addition) Because a decision on performance indicators in A.02-12-027/028 has been deferred until well into 2004, it is necessary to extend the term of SDG&E's and SoCalGas' currently-adopted performance indicators through the end of 2004.

**Ordering Paragraph 1:** San Diego Gas & Electric Company and Southern California Gas Company shall defer their cost of service and performance-based ratemaking applications for one year and base them on a 2004 test year. (Addition) The performance indicators currently in place for SDG&E and SoCalGas shall continue in full force and effect through the end of 2004.

These two changes to D.01-10-030 are adopted, as modified in Ordering Paragraph 3, to reflect the authorization as described in this decision. Granting this petition closes these proceedings.

### **Assignment of Proceedings**

Geoffrey F. Brown is the Assigned Commissioner and Angela K. Minkin is the assigned ALJ for A.98-01-014. Susan K. Kennedy is the Assigned Commissioner for both A.95-06-002 and A.96-10-038, and Michael J. Galvin is the Assigned ALJ for A.95-06-002, and Robert A. Barnett is the Assigned ALJ for A.96-10-038.

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<sup>9</sup> Petition, Page 12.

**Comment on Draft Decision**

The ALJ Minkin's draft decision was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.

**Findings of Fact**

1. The performance indicators as adopted in A.98-01-014 and 95-06-002 are due to expire at the end of 2003.
2. The incentive mechanisms requested by SoCalGas and SDG&E in the consolidated A.02-12-027 and 02-12-028 were bifurcated and there will not be a Commission decision before the start of test year 2004.
3. The Commission does not yet know in A.02-12-027 and 02-12-028 whether any financial incentive mechanism is reasonable for test year 2004.
4. Extending the current performance indicators into 2004 provides SoCalGas and SDG&E management objectives for meeting customer service needs.
5. Adoption of performance indicators is not the same thing as adopting an incentive mechanism.

**Conclusion of Law**

1. Application of SoCalGas and SDG&E's performance indicators that are not adopted before the start the test year cannot be retroactively applied to the start of the test year.
2. Extension of the existing performance indicators at this time does not prejudice the need for, or reasonableness of any potential financial incentive mechanism for test year 2004.
3. Extension of the existing performance standards does not prejudice their use in any financial incentive mechanism that may be adopted for test year 2004.

4. It is not reasonable to extend the previously adopted financial incentive component of the performance indicators.

**IT IS ORDERED:**

1. The existing performance indicators for Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) as last adopted in Decision (D.) 01-10-030 are hereby extended to December 31, 2004.

2. The existing incentive mechanisms for SoCalGas and SDG&E, including the financial incentives associated with the performance indicators, as last adopted in Decision (D.) 01-10-030, will terminate on December 31, 2003.

3. Decision 01-10-030 is modified as follows:

**(a) Finding of Fact 1:** A ~~one year~~ deferral of the SDG&E and SoCalGas COS/PBR applications is consistent with the Commission's priorities with respect to upcoming GRCs and related proceedings for all energy utilities. Because a decision on whether or not to adopt incentive mechanisms in A.02-12-027/028 has been deferred until after the start of test year 2004, it is reasonable to extend the term of SDG&E's and SoCalGas' currently adopted performance indicators, but not the associated financial incentives, through the end of 2004.

**(b) Ordering Paragraph 1:** San Diego Gas & Electric Company and Southern California Gas Company shall defer their cost of service and performance-based ratemaking applications for one year and base them on a 2004 test year. The currently authorized performance indicators, but not the associated financial incentives, for SDG&E and SoCalGas shall continue through the end of 2004.

4. Applications (A.) 98-01-014, A.95-06-002 and A.96-10-038 are closed.

This order is effective today.

Dated \_\_\_\_\_, 2003, at San Francisco, California.